1943.

File No. O. Public Conveyance 43.

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Subject:— Opinions under the Bombay Public Conveyances Act, 1920

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Office of the Hl.A.

The question for the consideration of the H.I.A. is whether Commissioner of Police will be able to refuse licenses to such contrivances altogether in view of his opinion that they are inadvisable in Bombay City.

2. A power to make a by-law to "regulate and govern" a trade does not authorise the prohibtion of such trade (Iyer's Law Lexicon p. 1098). Section 22(1) of the Bombay ~~kxkx~~ City Police Act, 1902, empowers the Commissioner of Police to make rules for regulation of traffic and for preservation of order in public place. That power cannot include the power to prohibit "Cycle-rickshaws". Consequently no rule can be validly framed under section 22(1) prohibiting the use of "Cycle-Rickshaws" in the city of Bombay.

3. Section 5(1) of the Bombay Public Conveyance Act provides that the Commissioner of Police may refuse to grant a license for a public conveyance if, in his opinion, the conveyance is insufficiently found or is otherwise unfit for the ~~xxxx~~ purpose for which it is intended. Under that section the Commissioner cannot make a general order refusing licenses to Cycle-rickshaws one and all. See Gell vs. Taja Noor 5 B.I.R. 133. He must consider each application as it is made and bring ~~x~~ his mind to bear on each particular vehicle for which a license is applied. The objections that have been raised to cycle-rickshaws seem to spring from the nature of their motive-power. for example the objections to their flimsy structure, their slow speed, their inability to climb a hill and the Bombay Municipal Corporation's argument that they offend human dignity and self reppect. Such objections to these vehicles will not be confined to any one particular type of cycle-rickshaws, but will be inherent in the nature of the conveyance itself and will presumably arise in

the case of every cycle -rickshaw. Some of these objections may be sufficient to justify the Commissioner refusing a license under section 5(1). The result willbe that he Commissioner may in his discretion refuse a license to every cycle-rickshaw although he cannot make a general order but must consider each application as it is made and the vehicle in respect of which it is made. It seems therefore that the commissioner will have power to prevent any cycle-rickshaw playing for hire once the Public Conveyances Act is amended.

Id/- P.N.M.
30/12.

Remembrancer of Legal Affrs.

W.F. to H.D. No. 9580, dated the 31st December 1943.

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